

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 17132 of 2023

**India Power corporation Limited (IPCL)
Vs.
The State of West Bengal and others**

For the petitioner	:	Mr. Saktinath Nath Mukherjee, Mr. Surojit Nath Mitra, Mr. S. Dutta, Mr. Anindya Halder
For the Respondent nos.1, 5 &6	:	Mr. Somnath Ganguli, Ms. Priyamvada Singh
For the Respondent nos.3 & 4	:	Mr. Manoj Munshi, Ms. Usha Doshi, Ms. Priyanka Gope
For the respondent no.7	:	Mr. Triptimoy Talukder, Mr. Shamba Chakraborty, Mrs. Chanchala Chatterjee
Hearing concluded on	:	04.08.2023
Judgment on	:	11.08.2023

Sabyasachi Bhattacharyya, J:-

1. The present challenge has been preferred against a cancellation of a Letter of Award (LoA) and debarment of the petitioner-company. The petitioner participated in a tender floated by the respondent no. 3 and turned out the successful bidder. LoA was, accordingly, issued to the petitioner on March 31, 2023. As per the terms of the tender

document, the successful bidder was to sign the AMISP Contract and furnish the initial Performance Security within 14 days from the date of issuance of the LoA. Failure to do so shall constitute “sufficient grounds for the annulment of the award and forfeiture of the Bid Security”. In that event, the Utility may award the AMISP Contract to the next lowest Bidder.

- 2.** The petitioner allegedly engaged the respondent no. 7, a financial service provider, to procure and to issue the performance bank guarantee to the tendering authority on behalf of the petitioner. However, on three successive occasions, the respondent no. 7 issued fake bank guarantees, upon coming to know of which the petitioner immediately lodged complaint with the police, giving rise to an F.I.R. The petitioner ultimately furnished a proper and valid bank guarantee on May 17, 2023. However, the same was not accepted and the LoA was cancelled, and the petitioner debarred for three years from participating in the tenders of the respondent no. 3. The writ petition has been filed against such cancellation and debarment.
- 3.** Learned Senior Advocate appearing for the petitioner submits that the petitioner was not at fault for the issuance of fake bank guarantees. The petitioner entrusted the respondent no. 7 with the task of procuring and furnishing the same, as evident from an agreement annexed to the writ petition. The petitioner also spent substantial amounts on such contract.
- 4.** Immediately upon learning of the forgery, the petitioner lodged complaint with the police and also communicated with the respondent

authorities expressing its helplessness. Thus, the petitioner could not be faulted.

5. It is submitted that the petitioner-company has been doing business for over a century and have a formidable goodwill. It would not stoop to so low levels as alleged, that too, after becoming successful in the tender.
6. Learned Senior Advocate appearing for the petitioner next argues that the respondent no. 3 had condoned the delay in issuing the performance bank guarantee by accepting the late filing of the same on May 17, 2023 as well as all prior bank guarantees. Before that, the petitioner had put in the first bank guarantee in due time; however, the same turned out to be fake, for which the petitioner was not responsible in any manner.
7. It is next argued that, as per the conditions in the tender document, delay in furnishing the bank guarantee would only furnish “sufficient ground” for annulling the LoA, and not have the effect of automatically annulling the LoA. Thus, there was sufficient discretion available to the tendering authority to condone the same. The respondent nos. 3 and 4 accepted the bank guarantee much after the expiry of the stipulated time and never tendered back the same. Thus, by its conduct, the tender-issuing authority has accepted the delayed submission of bank guarantee and condoned the delay in filing the same.

8. Learned Senior Advocate, lastly, contends that the technical default on the part of the petitioner, due to no fault of its own, does not justify the cancellation of the LoA and debarment of the petitioner.
9. Before entering into the merits of the case, learned counsel appearing for the respondent nos. 3 and 4 raises an objection as to maintainability of the writ petitioner before the Calcutta High Court on the ground of territorial jurisdiction.
10. It is argued that all the relevant transactions were performed in Madhya Pradesh. Even the website portal of the respondent no.3 is run and operated in Madhya Pradesh by the Government of Madhya Pradesh. The bids in the tender process-in-question were all evaluated in Madhya Pradesh. Even the decision to cancel the petitioner's LoA was taken in Madhya Pradesh.
11. Thus, this Court does not have territorial jurisdiction to hear the matter.
12. Learned counsel places reliance on *Union of India and others Vs. Adani Export Limited and another*, reported at (2002) 1 SCC 567, where the Supreme Court, while considering the scope of Article 226(2) of the Constitution of India, observed that none of the facts therein were in any way connected with the reliefs sought so as to constitute the cause of action at Ahmedabad. Two of such facts were that the respondents carried on their business from Ahmedabad and the respondents had executed a bank guarantee through their bankers at Ahmedabad as well as a bond at Ahmedabad. Similar to the present case, it is argued, in the said case also the respondents had pleaded

jurisdiction of the Gujarat High Court in view of such facts having occurred in Ahmedabad, which was turned down.

13. Learned counsel next cites *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others*, reported at (1994) 4 SCC 711. In the said case, a part of the cause of action was argued to arise within the jurisdiction of the Calcutta High Court because the concerned party became aware of the advertisement in Calcutta, submitted its bid from Calcutta and made representations, demanding justice, from Calcutta or learning about the rejection of the offer. However, it was held that the Calcutta High Court did not have jurisdiction. The object underlying the provision in Section 21 of the Code of Civil Procedure, it was held, was not to encourage such litigants who deliberately invoke the jurisdiction of a court having no jurisdiction for ulterior motives, but to avoid harassment to litigants who had *bona fide* commenced proceedings in a court which is later found to be wanting in jurisdiction.
14. Learned counsel further cites *South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. and others*, reported at (1996) 3 SCC 443, where the Supreme Court held, *inter alia*, that cause of action consists of the bundle of facts which give cause to enforce the legal injury for redress in a court of law and means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the

plaintiff a right to claim relief against the defendant and must include some act done by the defendant.

15. Learned counsel further cites a Division Bench judgment of this Court in *Utkarsh India Limited and Another Vs. Central Coalfields Limited and Another*, reported at 2021 SCC OnLine Cal 4259 where, in case of an online transaction, the Court held that though appellants have their place of business within the jurisdiction of this Court and had received the notice of disqualification at their office at Kolkata, the Jharkhand High Court had territorial jurisdiction since the integral part of cause of action, that is, floating of tender, scrutiny of documents and decision to disqualify the appellants and to impose penalty was taken at Ranchi, Jharkhand.
16. Learned counsel for the respondent nos.3 and 4 then cites *Aligarh Muslim University and another Vs. Vinay Engineering Enterprises (P) Ltd. And another*, reported at (1994) 4 SCC 710, where the Supreme Court had deprecated the assumption of jurisdiction by the High Court by adopting a queer line of reasoning, although no cause of action had arisen within its territorial jurisdiction.
17. The contesting respondents also place reliance on *National Textile Corpn. Ltd. And others Vs. Haribox Swalram and others*, reported at (2004) 9 SCC 786. The Supreme Court, while considering Article 226(2), turned down the claim that the Calcutta High Court had jurisdiction because letters were sent by the writ petitioners from Calcutta and replies had also been received at Calcutta and that the

petitioners were carrying on business at Calcutta, similar to the present case.

18. The contesting respondents next rely on *Alchemist Ltd. And another vs. State Bank of Sikkim and others*, reported at (2007) 11 SCC 335. In the said case as well, the offer of the appellant-Company was accepted and acceptance was communicated at Chandigarh. The letter of revocation was received by the appellant-company at Chandigarh. Consequences of the revocation ensued at Chandigarh. However, on considering all the relevant judgments on the issue, it was held that for the purpose of deciding whether the facts averred by the appellant-petitioner would or would not constitute a part of the cause of action, one has to consider whether such fact constitutes a material, essential or integral part of the cause of action.
19. Thus, it is submitted that since the relevant decisions in the present case were taken in Madhya Pradesh, including the cancellation of the LoA and debarment of the petitioner, this Court does not have territorial jurisdiction to entertain and decide the writ petition.
20. On merits, learned counsel for the respondent nos. 3 and 4, who are the contesting respondents, submits that the furnishing of three fake bank guarantees in quick succession was sufficient to debar the petitioner from participating in future contracts with the respondent no. 3 for three years. It is argued that the petitioner deliberately took a chance by furnishing fake guarantees, hoping that the forgery would be discovered only after the contract was awarded and at the stage of invoking the same much later, when it would be too late.

- 21.** It is argued that, in normal course of business, it is the bidder itself which is to furnish a bank guarantee. It is unheard of that a third party-financial service provider would furnish the bank guarantee on behalf of the bidder. Even as per the contract, it is the successful bidder who must furnish the same.
- 22.** It is alleged by the contesting respondents that the petitioner perpetrated the fraud and/or colluded in furnishing fake bank guarantees. Thus, the respondent no. 3 was justified in its apprehension of dubious credentials of the petitioner and rightly annulled the LoA and debarred the petitioner from participating in future tenders.
- 23.** In any event, it is submitted, the petitioner was much beyond time in submitting the performance guarantee.
- 24.** Sufficient opportunity of reply and show cause was given to the petitioner and, thereafter, the contesting respondents were compelled to take the impugned action.
- 25.** It is argued that there was no illegality, arbitrariness, unreasonableness or mala fides in the impugned annulment and debarment.
- 26.** The respondent nos. 3 and 4, who are the contesting respondents, submit that all relevant documents have been annexed to the writ petition. As such, no affidavits are directed, and the matter is taken up for adjudication on the issue of territorial jurisdiction as well as on merits. For adjudication of the objection of territorial jurisdiction, the nature of allegations made in the writ petition and certain aspects of

the factual disputes involved are required to be looked into. Hence, in terms of the principle laid down in Order XIV Rule 2 of the Code of Civil Procedure, all issues are taken up together for adjudication.

- 27.** Since the question of territorial jurisdiction goes to the root of the decision, the said issue is taken up for decision first.
- 28.** In *Alchemist (supra)*, the Supreme Court observed that, for the purpose of deciding whether facts averred by the petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a *material, essential, or integral* part of the cause of action.
- 29.** In *Adani Exports (supra)*, the Supreme Court observed that each and every fact pleaded does not give rise to a cause of action within the court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the *lis* that is involved in the case. The Court, in this context, relied on *ONGC (supra)*, where the Supreme Court, in the context of Article 226 of the Constitution, observed that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. The Court further held that, in determining the objection of lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.

- 30.** Again, the Supreme Court, in *South East Asia (supra)*, observed that cause of action is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant, since, in the absence of such an act, no cause of action would possibly accrue or would arise.
- 31.** *Aligarh Muslim University*, however, is a three-paragraph decision of the Supreme Court, where no ratio can be said to have been laid down. The same was apparently rendered in the context of a proceeding under Section 31 of the Arbitration Act, 1940. The Court held, in the facts of the case, that the arbitrator was from Aligarh and was to adjudicate there; merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seemed to have exercised jurisdiction where it had none by adopting a queer line of reasoning.
- 32.** However, the only common ingredients between the said case and the present are that territorial jurisdiction was decided and the petitioners are based in Calcutta (now Kolkata). It is rather obvious that where the seat of arbitration is Aligarh, the Calcutta High Court does not have jurisdiction under normal circumstances. No such issue is involved in the case at hand. Hence, the said judgment is not a germane precedent for the present consideration.
- 33.** In *National Textile Corporation (supra)*, the writ petitioner had claimed delivery of certain goods upon adjustment of payment and for injunction regarding the goods, which were to be supplied to mills at

Bombay (now Mumbai). The Supreme Court held that the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition.

34. Thus, respondent nos. 3 and 4 in the present case seek to draw an analogy with *National Textile (supra)* as, in the said case as well, it was held that the mere fact that the writ petitioner carries on business at Calcutta or that reply to correspondence made by it was received in Calcutta is not an integral part of the cause of action.
35. In the same tune, respondent nos. 3 and 4 herein also cite *Utkarsh India Limited (supra)*, where a Division Bench of this court, in connection with an online tendering process, held that this court had no jurisdiction, although the petitioners in the said case deposited earnest money from Kolkata and received all communication relating to the impugned tender, including the disqualification letter, which constituted cause of action, in Kolkata. There also, the Division Bench recorded the petitioners' case that the impugned letter had cause injury to their business and right to livelihood and thereby infringed their right to trade and business guaranteed under Article 19 (1) (g) of the Constitution. However, the Division Bench held that the entire process of the impugned tender had emanated from the Head Office of the Central Coalfields at Ranchi, Jharkhand, including the impugned notice of disqualification and penalty, which formed the integral part of cause of action for the *lis*.

- 36.** However, on facts relevant to the ratio under discussion, there are certain distinguishing features between the above cases and the present *lis*. In paragraph no. 24 of *Utkarsh India (supra)*, the Division Bench held that Clause 32 of the General Conditions of Contract as contained in the NIT clearly provided that in case of dispute arising out of the contract entered into with suppliers, those will be subject to the jurisdiction of the competent court of law. The courts in whose territorial jurisdiction from where contract is being issued is located, it was held, that is, Ranchi, Jharkhand, shall be competent to deal with any matter arising out of the purchase order/contract. No similar clause in the tender document has, however, been relied on in the present case. Here, the entire gamut of facts pertaining to the cancellation of LoA and debarment have to be looked into in the light of Article 226 (2) of the Constitution.
- 37.** Secondly, the cause of action in *Utkarsh India (supra)* was disqualification of the petitioner in a tender simpliciter. In *National Textile Corporation (supra)*, there was a contractual dispute, which led to withholding of goods.
- 38.** In the present case, however, the bundle of facts comprising the cause of action is not confined to the decisions taken in Madhya Pradesh by the Respondent nos. 3 and 4 simpliciter. The petitioner has specifically alleged that it had an arrangement with a financial service provider (respondent no. 7), who duped the petitioner-company with regard to the bank guarantees-in-issue. The petitioners also allege that the said service provider not only procured the bank guarantees,

but also sent them to the respondent-authorities of its own, without sanction from the petitioners, at least on the second or third occasion after discovery of fraud.

39. Unlike *Utkarsh's Case*, here the dispute is not merely a bid being turned down or disqualified on technical ground. The petitioner, in the present case, was admittedly the successful bidder after the entire tender process was over. It matter was at the stage of the petitioner being awarded a contract, which was not done on the allegation that the petitioner having failed to comply with the tender term of deposit of bank guarantee within 14 days.
40. Again, in *National Textile (supra)*, the dispute was contractual; the goods, as per the contract, were to be supplied in Mumbai which, having not been done, the case arose. Hence, the territorial jurisdiction was held to lie in Mumbai.
41. In the case at hand, however, the dispute involves an alleged fraud being perpetrated upon the petitioner as well in respect of the particular bank guarantees which were the genesis of the refusal.
42. Hence, at least a part of the cause of action definitely arose within the jurisdiction of this court.
43. *Nawal Kishore Sharma (supra)*, cited by the petitioner, is apt in the context. The Supreme Court, while considering the ambit of Article 226 (2) of the Constitution of India, was contemplating a situation where the petitioner had been making all correspondence from his native place in Bihar with regard to his disability compensation, the rejection of which was the subject-matter of challenge.

- 44.** Learned counsel for the Respondent nos. 3 and 4 seeks to distinguish the ratio of *Nawal Kishore's Case* on the ground that there, the Supreme Court had sympathised and taken into consideration the fact that the petitioner was suffering from serious heart muscle disease and breathing problem which forced him to stay in his native place. However, such contention cannot be accepted, since the mention of the disease by the Supreme Court was only in the context of ascertaining territorial jurisdiction. In fact, immediately after such finding in paragraph no. 17 of the judgment, the Supreme Court proceeds to hold that “Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.”
- 45.** Notably, the Supreme Court had considered, in *Nawal Kishore Sharma (supra)*, some of the decisions relied on by the respondent nos. 3 and 4, including *ONGC's Case* and *Kusum Ingots* as well as *Election Commission v. Saka Venkata Rao*, which were considered by the Supreme Court in *Alchemist (supra)*.
- 46.** The Division Bench of this Court, in *State of Orissa V. Goenka Investment and Mining Industries Pvt. Ltd.*, reported at AIR 1983 Cal 438, was considering as to whether a particular court had jurisdiction. There, the primary consideration was where the notice of termination was served, as there were two notices in contention. The court observed that one of the notices was not a termination notice, since not permitted as per the agreement and served on a non-

authorised person. The other notice, being free from such drawbacks, was held to be a valid notice and thus accepted as the termination notice which comprised of the cause of action. Having been served within the territorial jurisdiction of the concerned court, it was held to have jurisdiction. However, there the question was not whether the place of issuance of notice or the place of receipt of the same has jurisdiction.

- 47.** Another factor to be considered here is that the present challenge is not confined to the cancellation of work order to be issued to the petitioner, but also extends to the debarment of three years, which has both penal and civil consequences. Such consequences definitely extend to the petitioner's business activities in West Bengal, which is its base and where it is situated.
- 48.** The factum of the petitioner running a business within the territory of a court may be considered, under certain circumstances, irrelevant and immaterial with regard to a dispute in respect of rejection of a bid; but the said factor assumes major proportions when the challenge is also to a debarment, which directly affects the business of the petitioner everywhere, including in its seat of business, where it has its head office. The impugned debarment, although on paper confined only to tenders of the present respondent nos. 3 and 4, has larger and adverse effect on the goodwill of the petitioner-company. Apart from being a stigma against the petitioner in the sphere of its commercial activities, a debarment in respect of one tendering authority generally operates as a bar for others as well, since, almost in all tenders, there

is a restrictive clause regarding participation by bidders who are suffering or have recently suffered debarment from any other authority.

- 49.** Thus, at least a part of the cause of action arises in West Bengal, conferring territorial jurisdiction on this court, in the context of Article 226 (2) of the Constitution of India, to entertain and decide the writ petition on merits.
- 50.** In view of the above discussions, the objection regarding territorial jurisdiction, raised by the respondent nos. 3 and 4, is turned down.
- 51.** The main writ petition is now taken up for adjudication.
- 52.** The petitioner has alleged that it is a century-old company with impeccable goodwill and was in no way responsible for or connected with the forgery committed in respect of the bank guarantees. It alleges that the respondent no. 7 company, which was a financial service provider appointed by the petitioner for procuring and furnishing the bank guarantees, committed the forgery, may be in collusion with the banks or others. In fact, it is the petitioner which brought the forgery to the notice of the law enforcement authorities by lodging complaints before the police. Even the second and third fraudulent bank guarantees, it is contended, were sent by the respondent no. 7 of its own, without intimating the petitioner.
- 53.** Let us examine the turn of events.
- 54.** The LOA was issued to the petitioner on March 31, 2023 and the e-mail copy has well as signed copy of the bank guarantee worth Rs. 26 Crore 91 Lakh was sent from the petitioner's end on April 25, 2023.

The same, however, was notified to be fake by the concerned bank on April 29, 2023.

- 55.** The second bank guarantee was sent on May 3, 2023, which was also fake. Now the respondent no. 3, vide letter dated May 10, 2023, sought an explanation, as a prequel to the show cause.
- 56.** However, a third fake bank guarantee was sent on May 16, 2023, when the respondent no. 4 had also written to the petitioner.
- 57.** At last, on May 17, 2023, a proper bank guarantee was issued by the petitioner.
- 58.** The petitioner, with more than a century's experience behind it, was expected to be more cautious. It is rather incredible that as many as three fake bank guarantees were sent by it, or on its behalf, on as many as three successive occasions, be it through a 'financial service provider' or otherwise. The moment the first fraud was detected, the petitioner ought to have taken corrective steps. Yet, two more similar fake bank guarantees were sent on its behalf, from two different banks.
- 59.** The first fake bank guarantee was sent not by the service provider but by the petitioner itself, as evident from the petitioner's email dated April 25, 2023, annexed at page 192 of the writ petition. The concerned bank, that is, the ICICI Bank, vide email dated April 29, 2023, informed the petitioner about the fraud.
- 60.** Yet, the petitioner stuck to its blind faith on the perpetrator of the first fraud, that is, the respondent no. 7. In the complaint lodged by the petitioner, on the basis of which a First Information Report has been

registered (even as per the annexures to the writ petition), the petitioner “believed” the respondent no. 7 after the discovery of the first fraud and used the second fake bank guarantee provided by respondent no. 7 dated May 3, 2023 and “waited for signing the contract” with the M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., as stated in paragraph no. 10 of the complaint, annexed to the writ petition.

- 61.** The petitioner alleges that thereafter, on May 16, 2023, the respondent no. 7 issued a third fake bank guarantee, this time in the name of the Federal Bank, without prior intimation to the petitioner.
- 62.** However, there is nothing on record to show that the petitioner had put any mechanism or instruction in place for the respondent no. 7 to give prior intimation to the petitioner before sending another bank guarantee. Rather, even till then, the petitioner was apparently sitting tight over the repeated forgeries committed in its name, allegedly by the respondent no. 7. The complaint against the alleged perpetrator came long after, when the petitioner lodged complaint with the police on May 23, 2023, which gave rise to a First Information Report.
- 63.** Thus, the petitioner was guilty of utter negligence and was complacent even after coming to know of the first instance of fraud, if not being in connivance with the respondent no. 7 or other perpetrators of the forgery.
- 64.** Thus, there was sufficient reason for the respondent nos. 3 and 4 to cancel the LOA issued to the petitioner.

- 65.** Moreover, the outer limit of 14 days, as per the NIT, had long expired on April 14, 2023. The first genuine bank guarantee was furnished by the petitioner only on May 17, 2023, that is, more than one month thereafter. There was no reason for the respondent authorities to condone such delay, particularly in the context of the petitioner's conduct of furnishing three fake bank guarantees in quick succession.
- 66.** The Instructions to Bidders, which was admittedly a part of the tender document, stipulated that the successful Bidder "shall" furnish the initial Performance Security within 14 days of the receipt of notification of award. The expression "shall" lends a mandatory tone to the said clause.
- 67.** The petitioner argues that the annulment of the award, on non-compliance of the condition, was not automatic, since the language of the relevant clause was that failure of the successful Bidder to submit the initial Performance Security shall constitute "sufficient ground" for the annulment and forfeiture of the Bid Security. However, the very next sentence permits the Utility to award, in such case, the AMISP Contract to the next lowest Bidder.
- 68.** The conjunction of "shall" in furnishing the performance security in time and the provision, on failure, to annul the LOA, forfeit security and award the contract to the next lowest Bidder, does not leave any doubt that the tenderers were at full liberty to do so, immediately upon the delay having been committed. In fact, the respondent nos. 3 and 4 were rather charitable in issuing so many warnings and seeking explanation from the petitioner in the present case.

- 69.** The petitioner has next argued that the respondent nos. 3 and 4, by their conduct of accepting the valid (fourth) bank guarantee as Performance Guarantee, had condoned the delay. However, the said argument is misconceived.
- 70.** There was no instance, at any point of time, of the respondent nos. 3 and 4 acquiescing, 'accepting' the bank guarantee or condoning the considerable delay in submitting the same. Rather, by its several communications, as referred to above, the respondent nos. 3 and 4 had been consistently intimating the petitioner that it was already out of time in furnishing performance security after expiry of 14 days. Explanations were also sought repeatedly, for the submission of fake bank guarantees.
- 71.** By its letters dated May 10 and May 16, 2023, the respondent no. 3 had repeatedly taken the stand that the petitioner's failure to submit the bank guarantee on the due date had created an event of default; consequently, the LoA issued on March 31, 2023 was liable to be cancelled. Hence, at no point was there any 'acceptance' or 'condonation' by the respondents.
- 72.** In any event, furnishing three admittedly fake bank guarantees, even though the first of which was furnished within the stipulated time, is the very antithesis of bona fides on the part of the petitioner.
- 73.** In *R.K.Saxena V. Delhi Development Authority [(2001) 4 SCC 137]*, relied on by the petitioner, there was acceptance of several delayed payments, which was deemed to be extension of time. Here, there is no acceptance of any payment or interest thereon, since all the prior

bank guarantees submitted by the petitioner were fake. The only valid one was furnished more than one month after the expiry of the last date.

- 74.** It does not lie in the mouth of the petitioner to place reliance of *Poddar Steel Corporation V. Ganesh Engineering Woks and Others*, reported at (1991) 3 SCC 273, which speaks about “minor technicality” being waived. If furnishing three successive fake bank guarantees is termed as a “minor technicality”, this court is at a loss to assess what is a major default.
- 75.** In *Miss Santosh Mehta V. Om Prakash and Others* [(1980) 3 SCC 610], the context was judicial discretion to strike out the defence of a tenant where the statutory provision was read in lenient perspective by the Supreme Court. However, the protection given to a tenant by a statute, that too in an era of beneficial legislation for the tenants, which was read by the Supreme Court in advancing the intention of the legislature, cannot be extended to the petitioner-company in the present case, that too, in a fully commercial transaction.
- 76.** Hence, none of the said reports have any relevance in the present context.
- 77.** Thus, the respondent nos. 3 and 4 were justified in cancelling the LoA, in view of the delay of more than one month beyond the outer stipulated limit occasioned by the petitioner in furnishing the performance security bank guarantee.
- 78.** Insofar as the debarment is concerned, there is also nothing illegal or irregular there. The petitioner was given ample opportunity of showing

cause and explaining its conduct. In fact, the first three bank guarantees being fake is an admitted position.

- 79.** The reason behind such issuance of forged bank guarantees and the role of the petitioner therein is, undoubtedly, a subject-matter of criminal investigation. However, it cannot be denied that, from the perspective of the tenderer, there were sufficient reasons to apprehend foul play if work was awarded to the petitioner in the near future.
- 80.** Moreover, vis-à-vis the tendering authority, the petitioner ought to have been much more careful and cautious. It was negligent in shifting the entire responsibility on the respondent no. 7, without itself verifying the genuineness of the bank guarantee, which was an essential component of getting the contract, on several occasions. Such careless conduct on the part of the petitioner furnished sufficient justifiable grounds to debar the petitioner for three years from participating in the tenders of the respondent nos. 3 and 4.
- 81.** Learned counsel for the respondent nos. 3 and 4 has rightly argued that, there being no flaw in the decision-making process, the writ court ought not to impose its own decision on the tendering authorities.
- 82.** Moreover, there was no instance of arbitrariness, mala fides or unreasonableness in the impugned acts of the respondent-authorities. Even applying the Wednesbury principle, there is no flaw in the cancellation of the petitioner's LoA or debarment of the petitioner worth interference by this court under the writ jurisdiction.

- 83.** Before parting, the respondent nos. 3 and 4 have cited *Dalip Singh V. State of U.P. and Others*, reported at (2010) 2 SCC 114 for the proposition that a new creed of dishonest litigants, who are polluting the stream of justice, ought to be strongly deprecated. However, although the respondent nos.3 and 4 were undoubtedly negligent in their over-reliance on respondent no. 7, which justifies the cancellation and debarment impugned herein, it is too early yet, before the conclusion of the criminal trial, to hold beyond doubt the petitioner's direct involvement, perpetration of the offence and/or collusion with the perpetrators thereof. Thus, labelling the petitioner a "dishonest litigant" would probably be too harsh and premature at this stage. In so far as the present writ petition is concerned, the petitioner has not suppressed a single essential or relevant component of the chain of events leading to the cause of action and, as such, cannot be called an 'unscrupulous' or a 'dishonest litigant' at least for the purpose of the present writ petition.
- 84.** Learned counsel for the contesting respondents has also relied on *N.G. Projects Ltd. V. Vinod Kumar Jain and Others*, reported at (2022) 6 SCC 127. There, the Supreme Court deprecated court interference in tenders in respect of infrastructure projects or projects involving public interest. The said proposition is applicable in the present case too, as the project in question involves public interest. However, in any event, the writ petitioner does not succeed in the present case on other considerations, as spelt out above.

85. Hence, the writ petition fails. Accordingly, WPA 17132 of 2023 is dismissed on contest without, however, any order as to costs.
86. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(**Sabyasachi Bhattacharyya, J.**)